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701769—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 115

ESTHER CRYSTAL PICKETT, OTHERWISE KNOWN AS E. C. PICKETT, PETITIONER

v.

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

Neither the District Court nor the Circuit Court of Appeals rendered an opinion. The judgment of the Circuit Court of Appeals is set forth on pages 59 and 60 of the record.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on February 23, 1946 (R. 59). The petition for a writ of certiorari was filed on May 21, 1946. The jurisdiction of this Court is in-

voked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether an action to recover statutory damages under Section 205 (e) of the Emergency Price Control Act of 1942 as amended may be brought after the expiration of one year from the date of the making of the contract for the sale of a commodity which in fact was sold at a price above the legal maximum, where less than a year has elapsed since the date of the sale and delivery of the commodity and the contract did not call for a price in excess of the legal maximum.

2. Whether the Price Administrator is estopped from maintaining an action under Section 205 (e) of the Emergency Price Control Act of 1942 by reason of the defendant's reliance upon erroneous and unauthorized advice given by a subordinate employee of the Office of Price Administration.

STATUTES AND REGULATIONS INVOLVED

The action involves the Emergency Price Control Act as amended (56 Stat. 23, 58 Stat. 632, 50 U. S. C. App., Supp. IV, 901 et seq.), Revised Maximum Price Regulation 341 (8 F. R. 11176), and Revised Procedural Regulation No. 1 (7 F. R. 8961). The pertinent provisions of each are set forth in the Appendix.

STATEMENT

Petitioner is a money-lender doing business in Boulder, Colorado, under the name of E. C. Pickett. She acquired, by foreclosure or repossession, a Chevrolet truck in December 1943 (R. 21, 22). On January 15, 1944, one Harry Galbasini paid to the petitioner $100 as an initial payment on account of the purchase price of the truck. Concurrently with this payment Galbasini signed a document reading as follows (R. 41):

> Received of Harry Galbasini $100 deposit on 1942 Chev. truck. Balance of price of fifteen hundred and a few extra dollars will be paid by Jan. 20th 1944 if OPA price is arrived at by then.
>
> HARRY GALBASINI.

Petitioner testified that she executed a document of like tenor on the same date and delivered it to Galbasini. Thereafter the petitioner claims to have consulted a clerk of the War Price and Rationing Board at Boulder, Colorado, and that she was told by him that the maximum price at which the truck, together with the extras, might lawfully be sold was $1,508.95 (R. 22–27). On January 20, 1944, the petitioner transferred title and possession to the truck and extras to Galbasini and Galbasini paid the balance of the purchase price, namely, $1,408.95 (R. 7–8, 27).

Alleging that the sales price of the truck exceeded the legal maximum price established by

Revised Maximum Price Regulation 341, the Price Administrator on January 18, 1945, brought this action to recover statutory damages under section 205 (e) of the Emergency Price Control Act of 1942 as amended (R. 1–3). The District Court after trial on the merits gave judgment for the Price Administrator for $438.59 (R. 53–54). By stipulation the judgment was reduced to $247.98 (R. 59). As so reduced, the judgment was affirmed by the Circuit Court of Appeals for the Tenth Circuit (R. 59–60).

ARGUMENT

I

Petitioner's contention that the one-year period of limitation prescribed by Section 205 (e) of the Act began to run from the date on which the alleged contract was made, is not only without merit, but raises a question which is not presented by the record. Section 205 (e) of the Act provides that "if any person selling a commodity violates a regulation * * * prescribing a maximum price or maximum prices" the Administrator, and in certain circumstances the consumer, may bring an action against him on account of the overcharge, "within one year from the date of the occurrence of the violation." As the Circuit Court of Appeals held in *Schreffler* v. *Bowles,* 153 F. (2d) 1, certiorari denied, June 10, 1946, No. 1124, October Term, 1945, where at successive intervals of time a party contracts to sell

and later sells and thereafter delivers a commodity at a price in excess of the legal maximum, the contract, the sale, and the delivery each constitutes a violation of the regulation and an action is seasonably brought under Section 205 (e) (although but one recovery can be had) if brought within one year from the date of the occurrence of the violation latest in point of time (See brief in opposition, in *Schreffler* v. *Bowles, supra*). Indeed in the present case it is plain that no violation of the regulation of any kind occurred more than one year prior to the date (January 18, 1945) on which the action was commenced. It is true that on January 18, 1944, the petitioner and Galbasini executed receipts which conceivably might be considered a contract for the purchase and sale of the truck. But the alleged contract was, by its express terms, at most a contract to sell the truck at the lawful maximum price whatever that might be determined to be (R. 41). Such a contract plainly does not constitute a violation of the regulation. Since the first violation occurred on January 20, 1944, the date on which the vehicle was sold and delivered at an excessive price (R. 33; 52), and the complaint was filed on January 18, 1945, it is clear that the action was seasonably brought.

II

The contention of the petitioner that respondent was estopped from maintaining the action

because of the advice which the petitioner claims she received from a clerk of the War Price and Rationing Board is clearly untenable. The law is well settled that the United States cannot be estopped by advice given by its officers. *United States* v. *San Francisco,* 310 U. S. 16; *Utah Power & Light Co.* v. *United States,* 243 U. S. 389; *Schreffler* v. *Bowles,* 153 F. (2d) 1 (C. C. A. 10th), certiorari denied June 10, 1946, No. 1124, October Term, 1945; *Bowles* v. *Indianapolis Glove Co.,* 150 F. (2d) 597 (C. C. A. 7th), certiorari denied January 28, 1946, No. 617, October Term, 1945; *Wells Lamont Corporation* v. *Bowles,* 149 F. (2d) 364 (Em. Ct. App.), certiorari denied October 8, 1945, No. 181, October Term, 1945; *Rainbow Dyeing and Cleaning Co.* v. *Bowles,* 150 F. (2d) 273 (App. D. C.); *Bowles* v. *Sisk,* 144 F. (2d) 163 (C. C. A. 4th).

With a view to protecting persons desiring to comply with maximum price regulations, the Price Administrator has issued a regulation (Revised Procedural Regulation No. 1, 7 F. R. 8961), prescribing a procedure whereby any person affected by any such regulation may obtain an official interpretation thereof, and designating the persons authorized to give such interpretations. As a matter of policy the Administrator has consistently refrained from enforcing any liability against a person who has in good faith acted in reliance upon an interpretation obtained in the manner prescribed by the regulation mentioned.

As a matter of administrative necessity the regulation requires that all requests for official interpretations be in writing, and that none shall be regarded as valid unless in writing and signed by one of the following officers of the Office of Price Administration: "The Price Administrator, the General Counsel, an Associate or Assistant General Counsel, any Regional Attorney, any Regional Price Attorney, any District Price Attorney, and any Division Counsel to a Price Division or Chief Counsel to a Price Branch in the Office of Price Administration, Washington, D. C." Petitioner did not follow the procedure prescribed in this regulation.[1] She did not request an interpretation in writing; and the interpretation on which she claims to have relied was not in writing and was not given by any of the persons authorized to give an interpretation.

CONCLUSION

The judgment of the court below is clearly right. It is not in conflict with the decision of any other court; and was expressly decided (R. 60) on authority of *Schreffler* v. *Bowles,* 153 F. (2d) 1 (C. C. A. 10th), in which certiorari was denied by this Court on June 10, 1946, No. 1124, October Term, 1945. No question requiring re-

[1] If petitioner did not know of the Procedural Regulation, that fact would be wholly immaterial. It was published in the Federal Register and defendant is charged with knowledge of it (44 U. S. C. 307).

view by this court is presented. The petition for writ of certiorari should be denied.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement.

DAVID LONDON,
Director, Litigation Division.

SAMUEL MERMIN,
Solicitor, Litigation Division,
Office of Price Administration,
Washington, D. C.

JULY 1946.

APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 58 Stat. 632, 50 U. S. C. App., Supp. IV, 901 et seq.):

Section 302 (a):

> The term "sale" includes sales, dispositions, exchanges, leases, and other transfers, and contracts and offers to do any of the foregoing. The terms "sell," "selling," "seller," "buy," and "buyer," shall be construed accordingly.

Section 205 (e) as amended by Section 108 (b) of the Stabilization Extension Act of 1944, 58 Stat. 632:

> If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as

the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

Section 108 (c) of the Stablization Extension Act of 1944, 58 Stat. 632:

> The amendment made by subsection (b),[1] insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment of this Act. In other cases, such amendment shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter.

* * * * *

2. Pertinent provisions of Revised Maximum Price Regulation 341 (8 F. R. 11176).

> SEC. 2. *Prohibition against dealing in used vehicles at prices above the maximum.* (a) On and after August 16, 1943, regardless of any contract or other obligation, * * *
>
> (1) No person shall sell or deliver any used vehicle at a price higher than the maximum price permitted by this regulation; * * *.

3. Pertinent provisions of Revised Procedural Regulation No. 1 (7 F. R. 8961, 8 F. R. 3313, 8 F. R. 11806).

> SEC. 1300.51. *Interpretations.*—An interpretation rendered by an officer or employee of the Office of Price Administration with respect to any provision of the Act or of any regulation, price schedule, order, require-

[1] This refers to Section 108 (b) of the Stabilization Extension Act of 1944 (58 Stat. 632).

ment, or agreement thereunder, will be regarded by the Office of Price Administration as official only if such interpretation was requested and issued in accordance with § 1300.52 of this regulation. Action taken in reliance upon and in conformity with an official interpretation and prior to any revocation or modification thereof or to any superseding thereof by regulation, order or amendment, shall constitute action in good faith pursuant to the provision of the Act, or of the regulation, price schedule, order, requirement or agreement to which such official interpretation relates. An official interpretation shall be applicable only with respect to the particular person to whom, and to the particular factual situation with respect to which, it is rendered, unless publicly announced as an interpretation of general application.

SEC. 1300.52. *Requirements governing interpretations.*—(a) *Requests for interpretations; form and contents.* Any person desiring an official interpretation of the Emergency Price Control Act of 1942 or any regulation, price schedule, order, requirement or agreement thereunder, shall make a request in writing for such interpretation. Such request shall set forth in full the factual situation out of which the interpretative question arises and shall, so far as is practicable, state the names and post office addresses of the persons involved. If the inquirer has previously requested an interpretation on the same or substantially the same facts, his request shall so indicate and shall name the official or office to whom his previous request was addressed. If the interpretation will affect operations of establishments located in more than one state, the request shall name the states in which

the establishments are located. No interpretation shall be requested or given with respect to any hypothetical situation or in response to any hypothetical question.

(b) *Interpretation to be written; authorized officials.* Official interpretations shall be given only in writing, signed by one of the following officers of the Office of Price Administration: the Price Administrator, the General Counsel, any Associate or Assistant General Counsel, any Regional Attorney, any Regional Price Attorney, any State Attorney, or State Price Attorney, any Chief Attorney or Chief Price Attorney for a District Office and any Chief Counsel of a Price Legal Branch of the National Office: *Provided,* That interpretations of general application shall be announced only by the Price Administrator, the General Council, any Associate or Assistant General Counsel, or any Regional Attorney.

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